IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7690 of 2007(A)

(CRIME NO. 599/07 OF GANDHINAGAR POLICE STATION)

PETITIONERS/ACCUSED 1 & 2:

1. **ANISHKUMAR T.P., S/O. THANKAN, THEVALASSERI HOUSE, ARPOOKARA, KOTTAYAM.**
2. **ANOOP, S/O. THANKAN, THEVALASSERI HOUSE, ARPOOKARA, KOTTAYAM.**

BY ADV. SRI.C.A.CHACKO, ADV. SMT.C.M.CHARISMA, ADV. SRI.N.A.SHAFEEK.

RESPONDENT/ COMPLAINANT:

THE STATE OF KERALA, REPRESENTING SUB INSPECTOR OF POLICE, GANDHINAGAR, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7690 OF 2007

Dated this the 13th day of December, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether, there are 4 accused persons. On account of prior animosity, at about 7.20 p.m. on 7/10/07 accused 1 to 4 who came in two vehicles to the scene of the crime armed with dangerous weapons including swords allegedly unleashed an attack on the de facto complainant. He suffered serious injuries. There was total amputation of one finger. The petitioners face allegations for offences punishable, inter alia, under Sec.308 read with Sec.34 of the IPC. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners were not aggressors; but only victims of

aggression. There was a criminal case in which the petitioners are the victims. The present de facto complainant requested the petitioners to settle the dispute and the petitioners were not willing for the same. As a result of such animosity, they had attacked the petitioners. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there is no merit whatsoever in the contention that the petitioners were the victims of aggression. Admittedly, there is no injury suffered by any one of the accused persons. No counter case is registered even. In these circumstances, the petitioners may be directed to resort to the ordinary and normal course of surrendering before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioners must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the usual course. I am unable to find any features in this case which can

justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

5 In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge